NO. 89-1072

SUPREME COURT, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

CLIFFORD W. LATSHAW, Petitioner,

V

COMMONWEALTH OF PENNSYLVANIA,

V

SANFORD GROSS, HENRY BEAMER, ALBERT ZANGRILLI, GEORGE SHORALL, DALE SMOOT ROBERT RUSSELL, NANCY LATSHAW, AND MELLON BANK, N.A., Defendants.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA, PITTSBURGH OFFICE

Clifford W. Latshaw (Petitioner, pro se)
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QUESTIONS PRESENTED

Has the Petitioner been discriminated against, his right to due process of the law and equal protection of the law been found to be nugatory, solely because he has acted pro se, unable to secure an attorney for financial reasons?

Petitioner brought this case to this Court before at No. 87-5961. Respondent [1] stipulated to a dismissal of the case after initiating a criminal proceeding against the above-named defendants. For no apparent reason the criminal proceeding was discontinued.

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1 / The Respondent in this case is the Allegheny County, Pennsylvania District Attorney, Robert Collville.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA, PITTSBURGH OFFICE

Clifford W. Latshaw, Petitioner, pro se, hereby files in this Honorable Court his Petition for Writ of Certiorari, and in support thereof he states the following:

OPINIONS BELOW

The instant matter comes before this Court as the result of the denial by the Allegheny County District Attorney's Office of private criminal complaints against the above-captioned persons, having to do with an alleged criminal breach of trust. On appeal, the Criminal Division of the Court of Common Pleas of Allegheny County, Pennsylvania affirmed, Dauer, A.J. presiding.[2/]

Judge Dauer quotes the Superior

2/ A copy of the Orders of June 2, and 27, 1988 and the Opinion dated August 16, 1988 are attached hereto and marked Exhibits A, B, and C, respectively.

Court Opinion at No. 1020 PGH 85, which involved approximately the same circumstances as those herein, as such:

> "We will not reverse a disapproval of private criminal complaints on appeal absent a showing of gross abuse of discretion by the District Attorney or the Lower Court. Commonwealth v Eisemann, 276 Pa.Superior. 543, 546, 419 A.2d 591, 593 (1980) . ..."

He continues:

> "the complaints filed by appellant are cursory, confusing, and conclusory in nature."

Though it has been shown that an amount in excess of Two Hundred Thousand ($200,000.00) Dollars has been fraudulently taken from an estate trust at Mellon Bank, N.A., Judge Dauer states,

> "There was absolutely nothing presented as evidence at the hearing by Latshaw or in his subsequent motion for reconsideration, which would support even a remote allegation of criminal activity by any of the named parties he is attempting to have charged by this action."

The Superior Court of Pennsylvania (Hons. Cavanaugh, Brosky, and Watkins, JJ.)

affirmed the Lower Court's decision, citing violations of Rule 2119 of the Pa.R.A.P. (relating to references in briefs to place of raising arguments) on the issues of whether a recusal by the trial judge was appropriate, whether the trial judge was correct in stating that civil matters may not be consolidated with criminal matters in the United States Supreme Court, and whether an estoppel is present when the District Attorney stipulated to a dismissal, and to the initiation of a criminal proceeding, before the United States Supreme Court, while the case was consolidated with other civil appeals, relating to the same circumstances. On the remaining issue which complainant raised in his brief the Court stated:

> "Turning now to the sole remaining issue on this appeal, we note that appellant has, here too, failed to comply with Pa.R.A.P. 2119. However, because appellant has at least discussed this matter of criminality, with some degree of clarity, throughout his brief, we will not deem this issue to be waived. See ei bon ee baya ghananee v Black, 350 Pa.Super.

134, 504 A.2d 281, 284 (1986)."

However, the Court thereafter declares that there was no abuse of discretion on the part of the trial Court in disapproving the said private criminal complaints. The Supreme Court of Pennsylvania thereafter denied allowance of appeal.[3]

The certiorari jurisdiction is invoked in this case under 28 U.S.C. § 1257(3).

CONSTITUTIONS

The title, right or privelege claimed by Petitioner under the United States Constitution is found in the due process and equal protection clauses found in the 5th and 14th Amendments.[4]

Under the Pennsylvania Constitution

3/ A copy of the Orders of the Superior Court, dated February 28, and April 11, 1989 are attached hereto and marked Exhibits D and E, respectively. The Order of the Pennsylvania Supreme Court is attached hereto and marked Exhibit F.

4/ For verbatim text see the appendix pp. XXI.

Article I, section 8 provides that a person shall be secure from illegal seizures of his personal property, and Article I, section 15 provides that no particular class of people or particular class of case may be tried by special temporary criminal tribunals. 5/

OTHER STATUTES, ORDINANCES AND REGULATIONS

The following other Statutes, Ordinances and Regulations are involved herein: Pa.R.A.P. 2119, 2101, 105, 107, and 2311; Pa.R.Crim.P. 133; Rule 6.5 of the Pa. Orphan's Ct.; Rule 3, section 12 of the Alleg. Co. Orphan's Ct.; 18 Pa.C.S. § 4114, 4113, 3927, 3925, 4903, 4911, 4103, 5107, 306, 903; 20 P.S. § 229; 20 Pa.C.S. § 2517; 1 Pa.C.S. § 1921, 1922, 1928, 1933, 1953, 1954; and Rule 19.4 of this Court. 6/

5,6/ For verbatim text see the appendix, pp. XI - IXXX.

STATEMENT OF THE CASE

Complainant is one of four rightful heirs under the Last Will and Testament of Charles Aden Richardson, deceased, which was probated in Allegheny County, Pennsylvania at No. 2583 of 1980 (R. 69a).[7/] Through criminal breach of trust he claims and alleges that he is the victim of a crime committed by the above-captioned criminal co-conspirators.

The matter was commenced on July 5, 1985, when private criminal complaints, pursuant to Rule 133 of the Pa.R.Crim.P., were disapproved by the Allegheny County District Attorney, involving the same circumstances contained in the instant appeal. Complainant appealed to this Court at No. 87-5961, where he consolidated this matter with all of the civil matters relating to

---

7/ References "R" are to the appendix filed in the State Appellate Courts.

it (R. 40a), and an agreement in writing was entered into between Complainant and the Allegheny County D.A. on March 9, 1988, which stipulated to a dismissal of the appeal from the disapproval of said complaints, an official investigation having been initiated by the D.A. into any criminality involved. (R.68a) The instant appeal is from the Allegheny County D.A.'s finding that there was "insufficient evidence of a violation of the criminal statutes of Pennsylvania to warrant further investigation" (R. 101a), and the affirmation by the Criminal Division of the Court of Common Pleas of that finding.

New private criminal complaints were drawn up by Complainant (R. 83a-98a) at the initiation of the criminal proceeding, because he is untrained in the law, acting pro se, and had discovered that the original complaints had cited violations of criminal statutes which did not encompass the whole

of the criminal activities involved herein.

On February 22, 1988 certiorari was denied at 108 S.Ct. 1036. On March 9, 1988 the above-mentioned investigation was stipulated to, concerning the above-captioned alleged criminals. On April 18, 1988 rehearing was denied at 108 S.Ct. 1492. The Honorable Robert E. Dauer, A.J. had denied approval of the original private complaints on July 5, 1985 and entered an Opinion, dated July 16, 1986 (R. 60a). The instant appeal is from the Order, which is attached hereto, by the Honorable Robert E. Dauer, A.J., which denied approval of the new private complaints and additionally denied a motion for a new trial.

On May 15, 1984 George Shorall (Shorall), acting as the executor and administrator of the Last Will and Testament of C.A. Richardson, deceased, and Dale Smoot (Smoot), a trust officer of Mellon Bank,

N.A. (Trustee) filed a Petition for Distribution in the Allegheny County Orphan's Court, which stated the following:

> "... Charles Aden Richardson ... provided within the provisions of his Will, inter alia, as follows:
>
> 'THREE: All the residue of my estate I give to Mellon Bank, N.A., to hold fifty-two (52%) per cent thereof IN TRUST as FUND A and to hold the other forty-eight (48%) per cent thereof IN TRUST as FUND B. The Trustee shall invest and reinvest Fund A and Fund B as separate trusts and shall distribute the net income (hereinafter called "income") and principal of each as is hereinbelow provided:
>
> A. The following provisions shall apply to Fund A.
>
> (1) During the lifetime of my wife, VIRGINIA S. RICHARDSON, if she survives me, the Trustee shall pay the income quarter-annually to her or for her benefit. If the Trustee considers the income to be insufficient, in view of other income of which it has knowledge, to provide for her welfare and comfortable support, the Trustee is authorized in its discretion to use such sums from principal as it deems advisable therefor.
>
> (2) Upon my wife's death, if she survives me, the remaining principal and any accrued or undistributed income shall be transferred and delivered to or for the benefit of such one or more persons, corporations, or other organizations, including her own estate and her creditors, in such amounts and subject to such trusts, terms and conditions as she may appoint by specific reference to this power in her Will.'

.....

'SEVEN: I direct that all estate, inheritance and other taxes in the nature thereof, together with any interest and penalties thereon, becoming payable because of my death with respect to the property constituting my gross estate for death tax purposes, whether or not such property passes under this Will, shall be paid from the principal of my residuary estate; and no person receiving or having a beneficial interest in my such property, whether under this Will or otherwise, shall at any time be required to contribute to or refund any part thereof; PROVIDED, however, that if my wife survives me, all taxes be paid from Fund B. At any time prior to the vesting of a future interest in possession and enjoyment, my Executor or the Trustee to whom my residuary estate has been distributed shall have the discretion to elect and prepay all or any part of the death taxes thereon, and such election shall be binding upon all parties in interest.'

... Virginia S. Richardson ... exercised the power of appointment given to her under Article THREE A (2) of her husband's Will in favor of her estate ... "(R. 76a)

Paragraph THREE A (3) of Charles Aden Richardson's Last Will and Testament states the following, which was not included in the said Petition for Distribution:

"(3) If my wife does not exer-

cise this power of appointment in full or if she predeceases me, the unappointed principal and income shall be held and distributed as follows:

(a) My Trustee shall divide the principal into four (4) equal shares, creating one share for my wife's grandson, CLIFFORD LATSHAW; one share for my wife's granddaughter, CAROLYN LATSHAW; one share for my wife's granddaughter, LISA LATSHAW; and one share for my wife's granddaughter, SUSIE LATSHAW.

(i) Each share created for such grandchild shall be held in a separate trust, and my Trustee shall pay the net income therefrom to or for the benefit of said grandchild in at least quarter-annual installments, together with so much of the principal as my Trustee, in its sole discretion, shall deem advisable for said grandchild's health, maintenance, support and complete education, including college, postgraduate or professional training; such payments to continue for and during said grandchild's lifetime; subject however to the following rights of withdrawal.

Following the division of Fund A into shares, each grandchild upon attaining the age of thirty-five (35) years, may withdraw one-third (1/3) of the then remaining principal of his or her share of Fund A; upon attaining the age of forty-two (42) years, each grandchild may withdraw one-half (1/2) of the balance of the then remaining principal of his or her share of Fund A; and upon attaining the age of forty-nine (49) years, or at any time thereafter, each grandchild may withdraw the remaining principal of his or her share of Fund A. ... "

Smoot appeared at the audit hearing (R. 55a) and presented an affidavit requesting distribution pursuant to the provisions of Shorall's Petition for Distribution (R. 54a). Nancy Latshaw (Latshaw) and Robert Russell (Russell) were the recipients of the $247,408.21 distribution, and Sanford Gross (Gross) wrote Virginia S. Richardson's Will, which provided for such a distribution. No notice was given to the four named beneficiaries of her husband's Will as provided by the Pennsylvania Orphan's Court Rules. (R. 82a) 8/

The offenses alleged to have been committed are as follows, in respect to each above-named defendant and the circumstances hereof:

A. Securing Execution of Documents By

8/ An additional amount of close to $100,000.00 was distributed on May 31, 1988 to Latshaw and Russell, even though this matter was pending, and which Complainant discovered after this appeal was taken.

Deception, 18 Pa.C.S. § 4114: Under false pretenses as to existing law on the subject testamentary trust Gross, an attorney, advised decedent Virginia S. Richardson to execute a power of appointment clause in her husband's Will in favor of Latshaw and Russell. Gross further admitted such Will to probate with Latshaw and Russell being the sole subscribing witnesses to the execution of the Will and its being admitted to probate. Albert Zangrilli (Zangrilli), an attorney, with Henry Beamer (Beamer), an attorney, who is an expert in estate law, following Gross' example, executed attorney-client agreements between themselves and Latshaw and Russell (R. 20a). Shorall, an attorney, also following Gross' example, executed with Smoot disbursment of $247,408.21 in cash and securities from the trust account (R. 76a-82a, 54a-56a).

B. Misapplication of Entrusted Property and Property of Government or Financial Officials, 18 Pa.C.S. § 4113: While acting

as administrator of the estate of C.A. Richardson, deceased, Shorall and Smoot removed $247,408.21 in cash and securities from Trustee and placed it in the hands of Latshaw and Russell, with no notice to the rightful heirs.

C. Theft By Unlawful Taking or Disposition, 18 Pa.C.S. § 3921: Trustee, while acting in its capacity, as such, under the provisions of C.A. Richardson's Will, made a disposition of $247,408.21 in cash and securities to Latshaw and Russell. Smoot, an employee of Trustee's, carried out the paperwork for his employer in the said disposition. Shorall, while acting as the administrator of C.A. Richardson's estate, assisted Smoot. Gross aided Trustee before the fact and after, while acting as the administrator of V.S. Richardson's Will, for which fees were drawn (R. 53a). Beamer and Zangrilli aided Trustee after the fact, while acting as special trial counsel on behalf of Latshaw and Russell, for which they took

a fee.

D. Theft By Failure to Make Required Disposition of Funds Received, 18 Pa.C.S. § 3927: While acting as administrator of the estate of C.A. Richardson, deceased, Shorall and Smoot removed from Trustee $247,408.21 in cash and securities, placing it in the hands of persons other than the rightful heirs.

E. Receiving Stolen Property, 18 Pa.C.S. § 3925: Latshaw and Russell obtained, in the manner aforesaid $247,408.21 in cash and securities. Gross obtained in excess of $12,000.00 as fees in carrying out the said theft with the help of Beamer and Zangrilli, who also obtained large fees in furthering the said theft, from Latshaw and Russell. (R. 20a).

F. False Swearing, 18 Pa.C.S. § 4903: Latshaw and Russell filed affidavits in the Orphan's Court of Allegheny County, which denied that Complainant cared for

Mr. and Mrs. Richardson during their last illnesses, which was untrue (R. 8a, 9a), and which they knew to be untrue (R.28a).

G. Tampering With Public Records or Information, 18 Pa.C.S. § 4911: Fraudulent Destruction, Removal or Concealment of Recordable Instruments, 18 Pa.C.S. § 4103: Gross removed from the file of the estate of V.S. Richardson, deceased a receipt, dated July 24, 1984 (R. 1a), denied the existence of it at a hearing on September 18, 1984 (R. 2a), and replaced it in the file at a much later date with the intention of concealing the fact of the May 15, 1984 distribution from Complainant.

H. Aiding Consummation of Crime, 18 Pa. C.S. § 5107; Liability for Conduct of Another; Complicity, 18 Pa.C.S. § 306; Criminal Conspiracy, 18 Pa. C.S. § 903: Shorall, Beamer, Zangrilli, Gross, Smoot, and Trustee conspired to obtain for Latshaw and Russell the monies from the estate as aforesaid.

Gross aided in the May 15, 1984 distribution before and after the fact (R.32a-39a). Beamer and Zangrilli aided in the May 15, 1984 distribution after the fact, in the manner aforesaid (R. 10a-19a, 40a-52a).

The federal question was first raised by Petitioner in his Motion for Rule to Show Cause Why Private Criminal Complaints Should Not Be Approved, where it is stated: (R. 65a-66a)

> "... 6. On March 14, 1988 Appellant was questioned in the Allegheny County District Attorney's investigations unit by William Miller and another detective, concerning the alleged fraudulent distribution. In a telephone conversation on March 21, 1988 William Miller informed Appellant that it was doubtful whether the complaints would be approved, because of the following language contained in the will:
>
> > 'If my wife does not exercise this power of appointment in full or if she predeceases me, the unappointed principal and income (etc.) ...'
>
> On April 8, 1988 Appellant sent a letter to William Miller, which cleared up the misunderstanding which the District Attorney's Office had expressed. ... On April 14, 1988 the District Attorney's Office sent a letter to Appellant, dated April 7, 1988, informing him that no

complaints would issue against the Defendants. ...
... 8. Appellant further asserts that his constitutional rights have been violated in the disapproval of his private criminal complaints. Pennsylvania Constitution: Art. I, section 15, 8; United States Constitution: 4th,5th, and 14th Amendments."

The supporting Brief of the said Motion in the trial Court stated (R.106a):

"... The Allegheny County District Attorney's Office has disapproved Appellant's complaints, as if the crime committed by the defendant's is not within the particular class of cases with which they are willing to deal. Appellant's property was illegally taken from Mellon Bank. It is an unreasonable and unconstitutional seizure, which the defendants are guilty of. Probable cause exists, and the District Attorney's Office must be estopped from disapproving the private criminal complaints, especially since Appellant stipulated to a dismissal of the cause in the United States Supreme Court."

This same argument is made in Petitioner's Motion for New Trial. Additionally, the following is stated therein (R. 140a):

"... 6. At the hearing of this appeal before the Honorable Robert E. Dauer, A.J. on June 2, 1988 Judge Dauer stated that he knew George Shorall. Appellant contends that Judge Dauer should disqua-

lify himself ffom hearing the instant matter, because his friendship with Shorall is prejudicial to the outcome of this matter. ...
... 7. Judge Dauer acted with prejudice when he stated that no criminal action could exist when the crime alleged involved the willful securing of incorrect Orders of Court, or fraud on the Court. ... Moreover, the law does not encourage actions which cause friction between family members and regards such actions as imposing special responsibilities upon the Court and attorneys as officers of the Court..."

Judge Dauer, in his Opinion of August 16, 1988, waived Petitioner's federal issue and stated the following:

"... There was absolutely nothing presented as evidence at the hearing by Latshaw or in his subsequent motion for reconsideration, which would support even a remote allegation of criminal activity by any of the named parties he is attempting to have charged by this action. ..."

Petitioner's Brief in the Superior Court of Pennsylvania, at the Summary of the Argument states the following:

"The Lang v Com. Dept. of Pub. Welfare, 528 A.2d 1335 (Pa. 1987) case involved a discretionary trust, just as the instant case does. It was decided on July 13, 1987. This case was denied allowance of appeal in the Pennsylvania Supreme Court on September 9, 1987, and rehearing was denied on October 7, 1987. The

related case of In re Estate of Virginia S. Richardson, deceased, which was consolidated with this case in the Supreme Court of the United States, was denied allowance of appeal in the Pennsylvania Supreme Court on June 16, 1987, and rehearing was denied on October 14, 1987. A direct contradiction of law has been forced upon the Commonwealth of Pennsylvania. ... By stipulating to the initiation of an investigation the District Attorney's Office admitted its knowledge of the existence of probable cause. ..."

The Superior Court of Pennsylvania's Opinion made note of the fact that Petitioner was acting pro se, but this did not prevent the Court from discriminating against him because of it. The Opinion states:

"(more liberal approach taken when dealing with a pro se matter.) ... it is the responsibility of appellant to provide the district attorney and the trial court with sufficient information to enable them to make an informed decision on whether to approve the complaints. ... we have found nothing to indicate that appellant has fulfilled his duty in this regard. Thus, we find no abuse of discretion on the part of the trial court."

Petitioner's Petition for Reargument in the Superior Court makes this statement:

"The Court reached its conclusion in this case by an overriding and misapplication of the facts and the law. Its constant awareness of the opinions of the

> District Attorney, and of the unrelated prior decisions in the Orphan's Court undoubtably explain the Court's decision, but these don't save the Court's ruling from being an abuse of discretion when, as here, the record is devoid of supporting evidence and the District Attorney's Opinion is in error."

Petitioner's Petition for Allowance of Appeal in the Supreme Court of Pennsylvania reiterated his Superior Court and Trial Court arguments, but he was denied.

A pro se litigant's constitutionally protected interest is in the meaningful opportunity to be heard. In this case the Rule in Shelly's Case, as it has been statutorily limited in this country, state by state, for discriminatory reasons, has been found to be invalid. An important question of federal law presents itself, which has not been, but should be settled by this Court. Should the Courts allow the economically disadvantaged access to their due process and equal protection rights, as citizens, or do the Courts allow such persons access to these rights only if they are criminals?

ARGUMENT -

I. THE RULE IN SHELLY'S CASE AS IT APPLIES TO THE INSTANT MATTER

When Gross advised decedent V.S. Richardson to exercise her power of appointment, granted in her husband's Will, in favor of persons other than those named in his Will, he fraudulently coerced her to make a Will in contravention of the modern Rule in Shelly's Case. The rule of law known as the Rule in Shelly's Case ("The Rule") was formally and authoritatively announced in the case from which it takes its name, to wit, Shelly's Case, (1581) 1 Co.Rep. 93b, 76 E.R. 206, and it was a famous case at the time which even gained the attention of the then reigning queen of England. It is said to have been from far more remote origins, and the following quotation from Blackstone's Commentaries, wherein he lucidly and quaintly states the theory upon which it is based, may be of interest:

> "But, if an estate be made to A for life, remainder to his right heirs in fee, his heirs shall take by descent; for it is an ancient rule of law, that wherever the ancestor takes an estate for life, the heir cannot by the same conveyance take an estate in fee by purchase, but only by descent. ... The ancestor, during his life beareth in himself all his heirs; and therefore, when once he is or might have been seised of the lands, the inheritance so limited to his heirs vests in the ancestor himself; and the word 'heirs' in this case is not esteemed a word of purchase, but a word of limitation, inuring so as to increase the estate of the ancestor from a tenancy for life to a fee simple. And, had it been otherwise, had the heir (who is uncertain till death of the ancestor) been allowed to take as a purchaser originally nominated in the deed ... then, in the terms of strict feudal tenure, the lord would have been defrauded by such a limitation of the fruits of his seigniory, arising from a descent to the heir."

Jones' Blackstone, Volume I, p. 1030; See also Brewster's Blackstone and Rule in Shelly's Case, (1887) p. 226 et seq. for Pennsylvania cases.

A need developed to rid the Courts of the confusion which had been created by the devolution of the Rule, and it was repealed in Pennsylvania by the Act of July 15, 1935, P.L. 1013, No. 329, 20 P.S. §

229. That law states the following:

> "Be it enacted, &c., that grants or devises in trust, or otherwise, becoming effective hereafter, which shall express an intent to create an estate for life with remainder to the heirs of the life tenant, shall not operate to give such life tenant an estate in fee."

See Irwin, H.S., Legislative Limitation of The Rule In Shelly's Case in Pennsylvania, 40 Dick.L.R. 27, 32 (1935). (See also R. 109a-115a)

A further repeal and amendment was enacted under 20 Pa.C.S. § 2517, which states:

> "The Rule in Shelly's Case and its corrollaries shall not be applied, and a conveyance directly or in trust which carries an intent to create an estate for life with remainder to the life tenant's heirs or the heirs of his body or his issue or next of kin or persons described by words of similar import, shall not operate to give such life tenant an estate in fee in real estate or an absolute estate in personalty."
> (emphasis added)

Complainant was named in the Will of C.A. Richardson as being entitled to a remainder interest in his estate. The Court has either misapprehended or overlooked this specific fact, which is specifically pro-

vided for in the above statutes. The exercise of the power was "in favor" of decedent V.S. Richardson's "estate", which within the provisions of her husband's Will at paragraph THREE A (2) is equivalent to her heirs, since her power of disposition could only be by Will. Therefore, a disposition to her estate was, in fact, a disposition to her heirs. Additionally, the 1987 Cummulative Pocket Part to 20 Pa.C.S. § 2517 (Rule in Shelly's Case) states:

> "'or bequest' has been included to make certain that if the common law rule (in Shelly's Case) applies to personal property it is terminated as to it. See Appeal of Cockins v Harper, 111 Pa. 26; Hurd's Estate, 305 Pa. 394."

In In re Connell's Estate, 9 D. & C. 2d 381, 6 Fiduciary 628, 58 Lack.Jur. 9 (1958) the following is pertinent to the issue at hand:

> "... The Rule in Shelly's Case should not have been applied, since the life estates of the testator's children are equitable and the remainders to the grandchildren are legal ... Whitely's Estate, 273 Pa. 364, and the cases therein cited; Van Syckel's Trust, 319 Pa. 347; Xander v Easton Trust Co., 217

Pa. 485; American Law of Property, Vol. I, sec. 4.46. Further, the trust was active; the trustees are to 'invest' and 'reinvest' and use 'discretion' in allocation of principal and income on dividends: Xander v Easton Trust Co., 217 Pa. 485; Hemphill's Estate, 180 Pa. 95."

See also Lang v Com. Dept. of Pub Welfare, 528 A.2d 1335 (Pa. 1987)(which reversed Stoudt v Dept. of Pub. Welfare, 76 Pa. Commonwealth Ct. 576, 464 A2d 665 (1983).) See also Estate of Tashjian, 544 A.2d 67 (Pa.Super. 1988).

96 C.J.S. Wills § 878, p. 304 states the following, regarding the specific language of the trust instrument herein, which created the remainder interest in the gift in default of appointment:

"... It has been held, however, in a jurisdiction where operation of the Rule in Shelly's Case is subject to the testator's intent (as it is in Pa.), that a power in the life tenant to dispose of the remainder by Will, and in default of such Will said remainder to descend to the lawful heir or heirs of the devisee, will not, under the Rule in Shelly's Case create a fee in the first taker."

See also Woodbridge v Jones, 67 N.E. 878 (Mass. 1903); Olsen v Weber, 187 N.W. 465 (Iowa, 1922); Collins v Wickwire, 38 N.E. 365 (Mass. 1894); In re Estate of Curtis, 452 Pa. 527, 307 A.2d 251 (1973). See pp. 23-32 of the Petition for Certiorari, No. 87-5961.

The Court has also overlooked the fact that 1 Pa.C.S. § 1921, 1922 and 1933, relating to the construction of statutes, provide that specific provisions in one statute should be interpreted to secure a decision in the best interest of justice, and should not be overridden by the general provisions contained in another statute.

Pennsylvania Courts also recognize the repeals of former statutes through 1 Pa.C.S. § 1953, as relates to the instant matter. Moreover, 1 Pa.C.S. § 1954 provides our Pennsylvania Courts with a means of interpreting subsequent amendments.

II. HAVING CONCLUDED THAT THE EXERCISE OF THE POWER OF APPOINTMENT IS A FRAUD ON THE POWER, AS AFORESAID, THE PRIVATE CRIMINAL COMPLAINTS SHOULD HAVE BEEN APPROVED

There is no doubt that Latshaw and Russell received $247,408.21 in cash and securities on May 15, 1984, and that they filed an affidavit which included perjured denials of the fact that Complainant cared for both C.A. Richardson, who suffered from Alzheimer's Disease, and V.S. Richardson, who suffered from nerve damage and heart disease, during their last illnesses. There is no doubt that Gross assisted V.S. Richardson in exercising her power of appointment, and that he thereafter argued that he was correct in advising the decedent that she could exercise the power as she did in her Will. There is no doubt that Smoot, Trustee and Shorall distributed the monies without giving notice to the intended beneficiaries. Finally, there is no doubt that Beamer, an expert in estate law, and Zangrilli supported the stance that the

distribution was proper and lawful. Beamer and Zangrilli even propounded this theory to the extent of stating that Complainant had relinquished his undue influence argument, which was the crux of the Will Contest issue (R. 11a, 45a), and offered a trial transcript, which was filed over one year late as evidence thereof (See R. 30a), when Latshaw and Russell had assisted in the execution of the Will, which exercised the power. All of these facts are on paper and of record in the Allegheny County Orphan's Court.

In this case Complainant originally filed private complaints in which he cited statutes which, though not inaccurate, were not as descriptive of the crimes as the statutes stated in the new complaints. The following is stated in Com. v Barr, 25 Pa.Super. 609, 611 (1904):

> "Where, as in many instances, there is a choice of accusations, that is, where the defendant may fairly be ac-

cused of one crime or another or of more crimes than the one growing out of the transaction, it is plainly the duty of the magistrate taking the complaint to see that the accusation and commitment thereon are broad enough to cover the whole."

In any event, the circumstances which Complainant has brought to the Allegheny County D.A's attention are the same in the new complaints, as they were in the original ones. Trustee has been added as a conspirator. See Bogart, Trusts and Trustees (2d) § 861, p. 21, n. 52.

Complainant, being nothing other than a member of the general public, in seeing a violator of the laws brought to justice by the Commonwealth and punished for his misdeeds, is not entitled to the same standing, regarding the use of the Court's process, as would be a criminal defendant. See Piscanio Appeal, 235 Pa. Super. 490, 344 A.2d 658 (1975); Com. v Malloy, 450 A.2d 689 (Pa.Super. 1982), which states at p. 691-92:

"The prosecutor is under no compulsion

> to prosecute every alleged offender, and the decision to prosecute or not to prosecute is a matter within his discretion ... subject to review by the Court of Common Pleas."

See Cardenas, J., The Crime Victim in the Prosecutorial Process, 9 Harv. J. of Law and Pub. Policy 357, 398 (1986). For a discussion of the use of a criminal prosecution to coerce civil settlements, see Specter, A., How to Initiate a Criminal Prosecution, 23 Shingle 67, 68-69 (1960). In the instant case the monies were taken from the bank before the time to appeal the probate of the Will expired, and therefore the civil element was removed. Additionally, the fraud was perpetrated through the use of fraud on the Court, or on a party. See Averbach v Rival Mfg. Co., 809 F.2d 1016, 1020 (3d Cir. 1987), where fraud of this ~~type~~ may be grounds for the opening of a judgment. However, since the fraud was perpetrated in an action seeking the opening of a judgment, Complainant does not

have that remedy available to him.

As stated in U.S. v Rose, 526 F.2d 745, 748-49 (8th Cir. 1975), there are three things necessary to establish probable cause: 1) underlying circumstances of the crime; 2) the source of the information; 3) and an indication of the reliability of that source. In Com. v Hawkins, 469 A.2d 252, 255, n. 7 (Pa.Super. 1983) is stated the following:

> "It is unprofessional conduct for a prosecutor to institute, or cause to be instituted, or to permit the continued pendancy of criminal charges when it is known that the charges are not supported by probable cause."

See Dripps, D., More on Search Warrants, Good Faith and Probable Cause, 95 Yale L. J. 1424-32 (1986).

14 P.L.E., Estoppel § 2, p. 174 states the following on the subject of estoppel by record:

> "The rule is that the express admissions by a party to an action or admissions implied by his conduct are strong evidence against him, but that he may

prove that they were mistaken, and that he is not estopped by them unless another has been induced to alter his condition."

See also Blumenschein, F., Equitable Estoppel of the Government, 47 Brooklyn L.Rev.423, 442-467 (1981). In this case the Allegheny County D.A.'s Office stipulated with Complainant to have the appeal, which was consolidated with three other related matters in this Court, dismissed. This constitutes an express admission by their office, and they are estopped to deny the approval of the private complaints. Petitioner-Complainant was denied rehearing in this Court, he believes, because this Court believed that the stipulation would provide an avenue for Complainant to proceed with in the State Courts. He had been thusly induced to alter his condition.

Rule 6.5 of the Pennsylvania Orphan's Court Rules and Rule 3, section 12 of the Allegheny County Orphan's Court Rules provide that the account of the per-

sonal representative of an estate must be filed with the Register of Wills, and that notice must be made to the beneficiaries, or presumptive remaindermen. No account was filed under the correct docket number by Gross prior to the distribution, and the Allegheny County D.A.'s Office initiated an investigation into such an illegal distribution. See Talbutt v Security Trust Co., 22 F.Supp. 241 (E.D.Ky. 1938); Baird v People's Bank of Bloomington, 120 F.2d 1001 (3d Cir. 1941); Hansen v People's Bank of Bloomington, 594 F.2d 1149, 1153 (7th Cir. 1979); Green v Green, 218 F.2d 130, 139 (7th Cir. 1955); cf. Miller v Miller, 406 F.2d 590 (10th Cir. 1969).

False entries have been found to be evidence of crime, but misappropriation of funds is more applicable to cases such as the instant matter, e.g. U.S. v Pappas, 445 F.2d 1194 (3d Cir. 1971); Coffin v U.S., 156 U.S. 432 (1895). And, probate

records have been found to be "public records" within the statutory meaning. See People v McAtee, 95 P.2d 471, 35 Cal.App.2d 329 (1939); People v Crosby, 141 Cal.App.2d 172, 296 P.2d 438 (1956).

Complainant has changed the allegations of perjury to that of False Swearing, 18 Pa.C.S. § 4903, due to the distinction stated in Com. v Potts, 222 Pa.Super. 102, 286 A.2d 691 (1971), which is that perjury only applies when the falsehood stated bears directly on the central issue of the case.

In Bailey & Rothblatt, Defending Business and White Collar Crime, 1969, § 35:3 (2d ed.) is stated:

> "... If both title and possession is parted with in reliance on the taker's fraudulent representations, the crime is obtaining property by false pretenses, and not larceny."

In this case the crime in respect to the elderly widow is false pretenses, and in respect to the beneficiaries, larceny.

False pretenses as to labor and services are discussed in § 35:9, and false representation of ownership of property is discussed in § 35:10. See also § 35:21 (securing execution of documents by deception).

In People v Hewlett, 108 Cal.App. 2d 358, 239 P.2d 150 (1951), cert. den. 343 U.S. 981, reh.den. 344 U.S. 849 an attorney was convicted, while acting as the administrator of an estate, and under the color of Court Order appointing him as such, of theft. Other cases where attorneys were convicted of theft for embezzlement type offenses are: Com.v Levi, 44 Pa.Super. 253, (1910); Com. v Beale, 19 Pa.Super. 434 (1902); Com. v King, 35 Pa.Super. 454 (1908); State v Stroger, 478 A.2d 1175 (N.J. 1984), cert.den. 469 U.S. 1193; Matter of Blanchard, 516 N.Y.S.2d 7 (A.D. Dept. 1987); People v Lopez, 472 N.E.2d 867 (Ill.App. 1984); People v Stanford, 16 Cal.2d 247, 105 P.2d 969 (1940)(all

involving trusts); See also People v Barnett, 15 Cal.App. 89, 113 P. 879 (1910); People v Curoe, 422 N.E.2d 931 (Ill.App. 1981). In In re Severo, 714 P.2d 1244 (Cal. 1986) an attorney was convicted for criminal conspiracy, and in State v Kornegay, 326 S.E.2d 881, 888-93 (N.C. 1985) an attorney was convicted for obtaining money by false pretenses, involving a Court settlement. See Vestal, A., Res Judicata/Preclusion, sec V-366 (1969)(holding that a criminal action is generally not precluded by findings in a civil action involving the same circumstances).

In In re Backes, 109 A.2d 273 (N.J. 1954), a divorce case, a lawyer was disciplined for practicing fraud on the Court. It was decided that because the Court action was causing friction between family members, and degrading society in general, the attorney should be disbarred. See also Matter of Ireland, 706 P.2d 352, 355 (Ariz. 1985)

(divorce matter involved); Matter of Lauer, 324 N.W.2d 432 (Wis. 1982)(attorney disbarred for advancing an unwarranted claim under existing law); Developments in the Law, 94 Harv. L. Rev. 1244 (1981); Dorf, M., Disbarrment in the United States: Who Shall Do the Noisome Work?, 12 Col.J.L. & Soc. Prob. 1 (1975).

The Court has also misapprehended or overlooked the fact that Rule 19.4 of the Rules of this Court allows for the consolidation of appeals which involve the same circumstances.

Finally, although Pa.R.A.P. Rule 2101 demands conformance with the requirements of the rules, Com. v Stoppie, 486 A.2d 994 (Pa.Super. 1985); cf. Bolus v United Penn Bank, 363 Pa.Super. 247, 525 A.2d 1215, 1225, n. 2 (1987), Pa.R.A.P. Rules 105 (a) and 107 provide for a liberal construction of the Pa.R.A.P. and guarantee to the citizen of Pennsylvania the con-

sideration of good sense and practical utility in statutory construction. See Pa.C.S. § 1921, § 1928, § 1922, § 1933; Com. v Coleman, 289 Pa.Super. 221, 433 A. 2d 36, 39 (1981); Get Set Organization v Philadelphia Federation of Teachers, Local 3, 446 Pa. 174, 286 A.2d 633 (1972); See also, Paxon Maymar, Inc. v Commonwealth Liquor Control Bd., 11 Pa.Cmwlth. 136, 312 A.2d 115, 118 (1973), where it is stated:

> "Whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision. Statutory Construction Act. 1 Pa.C.S. § 1933."

III. THE FEDERAL QUESTION

In this case the Rule, as statutorily limited, has been, for discriminatory reasons, found to be irrational, and Petitioner is not asking that an act of legislature be found to be irrational. Instead, it is argued herein that those who would declare it to be irrational, under color of Court Order, should be charged as criminals. A pro se litigant's constitutionally protected interest is in the meaningful opportunity to be heard. See Bradlow, Procedural Due Process Rights of Pro Se Civil Litigants, 55 U. of Chicago L. Rev. 659, 676-83 (1988).

Since the post-1937 double standard was established in certain economic cases the Court has used the "rational basis" or "rational relation" test. Under this test "it is enough that the State's action be rationally based and free from invidious discrimination". See Dandridge

v Williams, 397 U.S. 471, 487 (1970). A classification having some reasonable basis does not offend the constitution. See Nelson, Wealth Classifications and Equal Protection: Quo Vadimus?, 19 Houston L.Rev. 713 (1982).This test, however is usually used in the evaluation of legislative acts, rather than judicial acts. See Halfon, A Changing Equal Protection Standard? The Supreme Court's Application of a Heightened Rational Basis Test, 20 Loyola of Los Angeles L. Rev. 921 (1987).

> "If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy". Olmstead v U.S., 277 U.S. 438, 485 (1928) (Brandeis, J. dissenting)

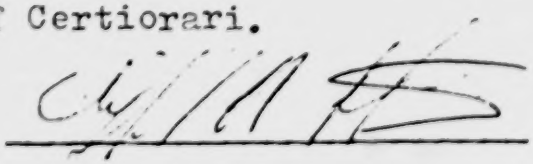
Nonuniformity in the law is disfavored for several reasons. First, nonuniformity conflicts with the basic equitable principle that two litigants, similarly situated, should be treated similarly. See Carrington, Crowded Dockets and the

Courts of Appeals: The Threat to the Function of Review and the National Law, 82 Harv. L. Rev. 542, 601 (1969). Second, non-uniformity promotes forum shopping. See Public Serv. Comm'n v Federal Power Comm'n, 472 F.2d 1270, 1273 (D.C.Cir. 1972); See also Caust-Ellenbogen, Using Choice of Law Rules to Make Intercircuit Conflicts Tolerable, 59 N.Y.U.L. Rev. 1078, 1080-81 (1984). Finally, the creation of inconsistent results in cases presenting similar facts conveys conflicting messages about the content of substantive law, thus engendering confusion among those looking to the Courts for signals by which to guide their conduct and behavior. See Levanthal, A Modest Proposal for a Multi-Circuit Court of Appeals, 24 Am. U. L. Rev. 881, 884 (1975).

CONCLUSION

Because of Petitioner's economic wealth classification, and the resulting lack of counsel in the instant matter, he has been denied his constitutionally guaranteed right to due process of the law. He has been denied a meaningful opportunity to be heard, and the above-named defendants conspired together in the pursuit of this objective. The Allegheny County D.A.'s Office is estopped from denying the approval of Complainant's private criminal complaints against these individuals, and it is a matter which should be decided by this Court.

WHEREFORE, Clifford W. Latshaw, Petitioner-Complainant, pro se, requests this Court enter an Order granting his Petition for Writ of Certiorari.



IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

Com. of Penna.)
v) No. Misc. 268
Sanford Gross, et al.) August 1985

AND NOW, June 2, 1988 after hearing in open Court, petition is denied.

BY THE COURT:
ROBERT E. DAUER

EXHIBIT A

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

Com. of Penna.)
v) No. Misc 268
Sanford Gross, et) August 1985
al.)

ORDER OF COURT

AND NOW, to wit, this 27 day of June, 1988, after careful review and due consideration, motion to reconsider is denied.

BY THE COURT:
ROBERT E. DAUER

EXHIBIT B

EXHIBIT C

OPINION

Clifford W. Latshaw was involved in a Will Contest in the Court of Common Pleas of Allegheny County, Orphan's Court Division, which was not decided in his favor. Subsequently, the District Attorney's Office of Allegheny County, Pennsylvania refused to approve his private criminal complaint alleging defendants had fraudulently taken in excess of Two Hundred Thousand ($200,000.00) Dollars from an estate trust account at Mellon Bank.

This Court, on July 8, 1985, then denied Latshaw's petition to approve the private complaints and an appeal was taken to the Pennsylvania Superior Court at No. 01020 Pittsburgh 1985. In its Opinion denying the relief requested by Latshaw the Court stated:

> We will not reverse a disapproval of private criminal complaints on appeal absent a showing of gross abuse of discretion by the District Attorney or the Lower Court. Commonwealth vs. Eisemen (sic), 276 Pa. Superior Ct. 543, 546, 419 A.2d 591, 593 (1980). At pages 2 and 3.

The matter was again brought before this court by Mr. Latshaw by his Motion For Rule To Show Cause Why Private Criminal Complaints Should Not Be Approved, filed May 6, 1988.

A hearing on defendant's motion was conducted before this court on June 2, 1988, and, thereafter said motion was denied.

Latshaw filed a motion for reconsideration of the court's order on June 10, 1988, and that motion was denied on June 27, 1988, thereby causing the within appeal.

The Superior Court in denying Latshaw's previous appeal noted that "the criminal complaints filed by appellant are cursory,

confusing and conclusory in nature". This court, following the hearing conducted June 2, 1988, is of the same opinion. There was absolutely nothing presented as evidence at the hearing by Latshaw or in his subsequent motion for reconsideration, which would support even a remote allegation of criminal activity by any of the named parties he is attempting to have charged by this action.

For the reasons stated herein defendant's Motion For A Rule To Show Cause Why Private Criminal Complaints Should Not Be Approved and defendant's Motion for Reconsideration were properly denied.

BY THE COURT:
8-16-88 ROBERT E. DAUER, J.

EXHIBIT D

Com. of Penna.	)	Superior Ct.
v	)	of Penna.
Sanford Gross, et al.	)	
Appeal of C.W. Latshaw	)	No. 987PGH88

Appeal from the Order of the Court of Common Pleas, Allegheny County, Criminal Division, at No. Misc. 268 August 1985

BEFORE: CAVANAUGH, BROSKY and WATKINS, JJ.

MEMORANDUM: FILED FEB. 28,1989

This is an appeal from the Order entered by the trial court denying approval of appellant's private criminal complaints and denying appellant's motion for reconsideration.

Appellant presents the following issues for our review: 1) whether the trial judge should have recused himself from the hearing; 2) whether appeals from the Criminal Division and Orphan's Court may be consolidated in the United States Supreme Court; 3) whether criminality existed in the instant action; and 4) whether the District Attorney properly refused to file a private criminal complaint after instituting a

criminal investigation.

Upon consideration of the trial court opinion and briefs submitted by the parties, we affirm the order in question.

Although appellant enumerates four issues for review in his Statement of Questions Presented, we will only be considering one of these. The first two issues raised by appellant regarding recusal by the trial judge and consolidation of the criminal matter and the Orphan's Court matter, have been waived for failure to be carried forth in the "argument" section of the brief. See, Pa.R.A.P. 2119; Pelagatti v Cohen, 370 Pa.Super. 422, 536 A.2d 1337 (1987); Giant Markets v Sigma Marketing Systems, 313 Pa. Super. 115, 459 A.2d 765, 771 n. 2 (1981).

Likewise, appellant's last issue regarding the district attorney's failure to file private criminal complaints following a criminal investigation, is waived. Granted, appellant did attempt to argue

his position and even summed it up in the following manner:

> No account was filed under the correct docket number by Gross prior to the distribution, and the Allegheny County District Attorney's Office initiated an investigation into such an illegal distribution, and are estopped from later denying the existence of any criminality.

Appellant's Brief at 17. However, appellant's argument is so vague and confusing that we will still consider it to be waived. See Ibn-Sadiika v Riester, ___ Pa.Super. ___, ___ A.2d ___ (No. 01171 Pittsburgh, 1988, filed 12/20/88), Slip Opinion at 3-4.

Turning now to the sole remaining issue in this appeal, we note that appellant has, here too, failed to comply with Pa.R. A.P. 2119. However, because appellant has at least discussed this matter of criminality, with some degree of clarity, throughout his brief, we will not deem this issue to be waived. See ei bon ee baya ghananee v Black, 350 Pa.Super. 134, 504 A.2d 281 284 (1986), (more liberal approach taken

when dealing with a pro se matter.)

Appellant argues, in essence, that criminality existed in the actions of appellees such that private criminal complaints against appellees should have been approved. As acknowledged by the trial court and both parties, the Superior Court will not reverse a disapproval of private criminal complaints absent a showing of gross abuse of discretion by the district attorney or the trial court. Commonwealth v Eisemann, 276 Pa.Super. 543, 419 A.2d 591 (1980). Further, it is the responsibility of appellant to provide the district attorney and the trial court with sufficient information to enable them to make an informed decision on whether to approve the complaints. Commonwealth v Muroski, 352 Pa.Super 15, 506 A.2d 1312 (1986). Instantly, upon review of the record, we have found nothing to indicate that appellant has fulfilled his duty in this regard. Thus, we

find no abuse of discretion on the part of the trial court in disapproving appellant's private criminal complaints. Order affirmed.

THE SUPERIOR COURT OF PENNSYLVANIA
SITTING AT PITTSBURGH

April 12, 1989

In re: Com. v Sanford Gross, et al.
No. 987PGH88

Dear Mr. Latshaw,

The court has entered the following order on your Application for Reargument filed in the above-captioned matter:

"ORDER

The court hereby denies the application filed March 13, 1989 requesting reargument or reconsideration of the decision dated February 28, 1989.

PER CURIUM"

EXHIBIT E

THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

September 1, 1989

In re: Com. v Sanford Gross, et al.
No. 251 W.D. Allocatur Dckt. 1989

Dear Mr. Latshaw,

The Court has entered the following Order on your Petition for Allowance of Appeal in the above-captioned matter:

"September 1, 1989

Petition denied

Per Curium"

EXHIBIT F

X

RULE 2119. ARGUMENT

(a) General Rule. The argument shall be divided into as many parts as there are questions to be argued; and shall have at the head of each part—in distinctive type or in type distinctively displayed—the particular point treated therein, followed by such discussion and citation of authorities as are deemed pertinent.

(b) Citations of Authorities. Citations of authorities must set forth the principle for which they are cited. Citations of uncodified statutes shall make reference to the book and page of the Laws of Pennsylvania (Pamphlet Laws) or other official edition, and also to a standard digest, where the statutes may be found. Citations of provisions of the Pennsylvania Consolidated Statutes may be in the form: "1 Pa.C.S. § 1928 (rule of strict and liberal construction)" and the official codifications of other jurisdictions may be cited similarly. Quotations from authorities or statutes shall also set forth the pages from which they are taken. Opinions of an appellate court of this or another jurisdiction shall be cited from the National Reporter System, if published therein, and to the official reports of Pennsylvania appellate courts, if published therein.

(c) Reference to Record. If reference is made to the pleadings, evidence, charge, opinion or order, or any other matter appearing in the record, the argument must set forth, in immediate connection therewith, or in a footnote thereto, a reference to the place in the record where the matter referred to appears (see Rule 2132) (references in briefs to the record).

(d) Synopsis of Evidence. When the finding of, or the refusal to find, a fact is argued, the argument must contain a synopsis of all the evidence on the point, with a reference to the place in the record where the evidence may be found.

(e) Statement of Place of Raising or Preservation of Issues. Where under the applicable law an issue is not reviewable on appeal unless raised or preserved below, the argument must set forth, in immediate connection therewith or in a footnote thereto, either a specific cross reference to the page

or pages of the statement of the case which set forth the information relating thereto required pursuant to Rule 2117(c) (statement of place of raising or preservation of issues), or substantially the same information.

(f) **Discretionary Aspects of Sentence.** An appellant who challenges the discretionary aspects of a sentence in a criminal matter shall set forth in his brief a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence. The statement shall immediately precede the argument on the merits with respect to the discretionary aspects of sentence.

RULE 133. APPROVAL OF PRIVATE COMPLAINTS

(a) When the affiant is not a law enforcement officer and the offense(s) charged include(s) a misdemeanor or felony which does not involve a clear and present danger to any person or to the community, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove without unreasonable delay.

(b) If the attorney for the Commonwealth

(1) Approves the complaint, the attorney shall indicate this decision on the complaint form and transmit it to the issuing authority;

(2) Disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. Thereafter the affiant may file the complaint with a judge of a Court of Common Pleas for approval or disapproval;

(3) Does not approve or disapprove within a reasonable period of time, the affiant may file the complaint on a separate form with the issuing authority, noting thereon that a complaint is pending before an attorney for the Commonwealth. The issuing authority shall determine whether a reasonable period has elapsed, and, when appropriate, shall defer action to allow the attorney for the Commonwealth an additional period of time to respond.

RULE 6.5 FILING WITH THE REGISTER OF WILLS

The account of a personal representative shall be filed in the office of the Register of Wills.

Sec. 12. *Notice to Parties in Interest.*

No account shall be confirmed absolutely unless the accountant has given written notice of the filing of the account and the call thereof for audit and confirmation to every unpaid claimant who has given written notice[31] of his claim to the accountant or his attorney of record, and to every other person known to the accountant to have or claim an interest in the estate, including creditors, beneficiaries, heirs, next of kin and the guardian, trustee ad litem, or representative of any party in interest not sui juris. Notice by letter sent by first class mail shall be deemed compliance with this section. Said written notice shall include a statement that a Petition for Distribution will be presented at the audit.[32] The notice shall state the date, time and place of the audit to the extent then known.[33]

§ 4114. Securing execution of documents by deception

A person commits a misdemeanor of the second degree if by deception he causes another to execute any instrument affecting or purporting to affect or likely to affect the pecuniary interest of any person.

1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973.

§ 4113. Misapplication of entrusted property and property of government or financial institutions

(a) Offense defined.—A person commits an offense if he applies or disposes of property that has been entrusted to him as a fiduciary, or property of the government or of a financial institution, in a manner which he knows is unlawful and involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted.

Grading. The offense is a misdemeanor of the second degree if the amount involved exceeds $50; otherwise it is a misdemeanor of the third degree.

[illegible] P.L. 1482, No. 334, § 1, effective June 6, 1973.

§ 3927. Theft by failure to make required disposition of funds received

(a) Offense defined.—A person who obtains property upon agreement, or subject to a known legal obligation, to make specified payments or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft if he intentionally deals with the property obtained as his own and fails to make the required payment or disposition. The foregoing applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the failure of the actor to make the required payment or disposition.

(b) Presumptions.—An officer or employee of the government or of a financial institution is presumed:

(1) to know any legal obligation relevant to his criminal liability under this section; and

(2) to have dealt with the property as his own if he fails to pay or account upon lawful demand, or if an audit reveals a shortage or falsification of accounts.

1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973.

§ 3925. Receiving stolen property

(a) Offense defined.—A person is guilty of theft if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner.

(b) Definition.—As used in this section the word "receiving" means acquiring possession, control or title, or lending on the security of the property.

1972, Dec. 6, Pl. 1482, No. 334, § 1, effective June 6, 1973.

§ 3921. Theft by unlawful taking or disposition

(a) Movable property.—A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof.

(b) Immovable property.—A person is guilty of theft if he unlawfully transfers, or exercises unlawful control over, immovable property of another or any interest therein with intent to benefit himself or another not entitled thereto.

1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973.

§ 4903. False swearing

(a) False swearing in official matters.—A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true is guilty of a misdemeanor of the second degree if:

(1) the falsification occurs in an official proceeding; or

(2) the falsification is intended to mislead a public servant in performing his official function.

(b) Other false swearing.—A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, is guilty of a misdemeanor of the third degree, if the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

§ 4911. Tampering with public records or information

(a) Offense defined.—A person commits an offense if he:

(1) knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government;

(2) makes, presents or uses any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of information or records referred to in paragraph (1) of this subsection; or

(3) intentionally and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing.

(b) Grading.—An offense under this section is a misdemeanor of the second degree unless the intent of the actor is to defraud or injure anyone, in which case the offense is a felony of the third degree.

1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973.

§ 4103. Fraudulent destruction, removal or concealment of recordable instruments

A person commits a felony of the third degree if, with intent to deceive or injure anyone, he destroys, removes or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording.

1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973.

§ 5107. Aiding consummation of crime

(a) Offense defined.—A person commits an offense if he intentionally aids another to accomplish an unlawful object of a crime, as by safeguarding the proceeds thereof or converting the proceeds into negotiable funds.

(b) Grading.—The offense is a felony of the third degree if the principal offense was a felony of the first or second degree. Otherwise it is a misdemeanor of the second degree.

1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973.

§ 306. Liability for conduct of another; complicity

(a) General rule.—A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both.

(b) Conduct of another.—A person is legally accountable for the conduct of another person when:

(1) acting with the kind of culpability that is sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct;

(2) he is made accountable for the conduct of such other person by this title or by the law defining the offense; or

(3) he is an accomplice of such other person in the commission of the offense.

(c) Accomplice defined.—A person is an accomplice of another person in the commission of an offense if:

(1) with the intent of promoting or facilitating the commission of the offense, he:

(i) solicits such other person to commit it; or

(ii) aids or agrees or attempts to aid such other person in planning or committing it; or

(2) his conduct is expressly declared by law to establish his complicity.

(d) Culpability of accomplice.—When causing a particular result is an element of an offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense, if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.

(e) Status of actor.—In any prosecution for an offense in which criminal liability of the defendant is based upon the conduct of another person pursuant to this section, it is no defense that the offense in question, as defined, can be committed only by a particular class or classes of persons, and the defendant, not belonging to such class or classes, is for that reason legally incapable of committing the offense in an individual capacity.

(f) Exceptions.—Unless otherwise provided by this title or by the law defining the offense, a person is not an accomplice in an offense committed by another person if:

(1) he is a victim of that offense;

(2) the offense is so defined that his conduct is inevitably incident to its commission; or

(3) he terminates his complicity prior to the commission of the offense and:

(i) wholly deprives it of effectiveness in the commission of the offense; or

(ii) gives timely warning to the law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.

(g) Prosecution of accomplice only.—An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction or has been acquitted.

1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973.

§ 903. Criminal conspiracy

(a) Definition of conspiracy.—A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:

(1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

(2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

(b) Scope of conspiratorial relationship.—If a person guilty of conspiracy, as defined by subsection (a) of this section, knows that a person with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring with such other person or persons, to commit such crime whether or not he knows their identity.

(c) **Conspiracy with multiple criminal objectives.**—If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

(d) **Joinder and venue in conspiracy prosecutions.**—

(1) Subject to the provisions of paragraph (2) of this subsection, two or more persons charged with criminal conspiracy may be prosecuted jointly if:

(i) they are charged with conspiring with one another; or

(ii) the conspiracies alleged, whether they have the same or different parties, are so related that they constitute different aspects of a scheme of organized criminal conduct.

(2) In any joint prosecution under paragraph (1) of this subsection:

(i) no defendant shall be charged with a conspiracy in any county other than one in which he entered into such conspiracy or in which an overt act pursuant to such conspiracy was done by him or by a person with whom he conspired;

(ii) neither the liability of any defendant nor the admissibility against him of evidence of acts or declarations of another shall be enlarged by such joinder; and

(iii) the court shall order a severance or take a special verdict as to any defendant who so requests, if it deems it necessary or appropriate to promote the fair determination of his guilt or innocence, and shall take any other proper measures to protect the fairness of the trial.

(e) **Overt act.**—No person may be convicted of conspiracy to commit a crime unless an overt act in pursuant of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired.

(f) **Renunciation.**—It is a defense that the actor, after conspiring to commit a crime, thwarted the success of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of his criminal intent.

(g) **Duration of conspiracy.**—For purposes of 42 Pa.C.S. § 5552(d) (relating to commission of offense):

(1) conspiracy is a continuing course of conduct which terminates when the crime or crimes which are its object are committed or the agreement that they be committed is abandoned by the defendant and by those with whom he conspired;

(2) such abandonment is presumed if neither the defendant nor any one with whom he conspired does any overt act in pursuance of the conspiracy during the applicable period of limitation; and

(3) if an individual abandons the agreement, the conspiracy is terminated as to him only if and when he advises those with whom he conspired of his abandonment or he informs the law enforcement authorities of the existence of the conspiracy and of his participation therein.

1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973. As amended 1978, April 28, P.L. 202, No. 53, § 7(2), effective June 27, 1978.

Historical Note

The 1978 amendment substituted "42 this title" in the opening paragraph of Pa.C.S. § 5552(d)" for "section 108(d) of subsec. (g).

Sec. 8. Security from searches and seizures

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or thing shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

Sec. 15. Special criminal tribunals

No commission shall issue creating special temporary criminal tribunals to try particular individuals or particular classes of cases.

(Amended May 16, 1967).

AMENDMENT 4

Unreasonable searches and seizures.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT 5

Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 14

Section 1. Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

RULE 2311. SUBMISSION ON BRIEFS

(a) General Rule. By agreement of the parties a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(b) Post Conviction Hearing Cases. All parties shall submit post conviction hearing cases on the briefs unless otherwise directed by the court on its own motion or upon application.

No. 329

AN ACT

To limit the operation of the rule in Shelly's case by providing that certain grants and devises in trust, or otherwise, shall be construed not to create estates in fee.

Limiting rule in Shelly's case.

Section 1. Be it enacted, &c., That grants or devises in trust, or otherwise, becoming effective hereafter, which shall express an intent to create an estate for life with remainder to the heirs of the life tenant, shall not operate to give such life tenant an estate in fee.

Repealing section.

Section 2. All laws inconsistent herewith are hereby repealed.

APPROVED—The 15th day of July, A. D. 1935.

GEORGE H. EARLE

§ 2517. Rule in Shelley's case

The rule in Shelley's case and its corollaries shall not be applied, and a devise or bequest directly or in trust which shall express an intent to create an estate for life with remainder to the life tenant's heirs or the heirs of his body or his issue or his next of kin or persons described by words of similar import, shall not operate to give such life tenant an estate in fee in real estate or an absolute estate in personalty.

1972, June 30, P.L. 508, No. 164, § 2, eff. July 1, 1972.

§1921 LEGISLATIVE INTENT CONTROLS

(a) The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.

(b) When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.

(c) When the words of the statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters:

(1) The occasion and necessity for the statute.

(2) The circumstances under which it was enacted.

(3) The mischief to be remedied.

(4) The object to be attained.

(5) The former law, if any, including other statutes upon the same or similar

subjects.

(6) The consequences of a particular interpretation.

(7) The contemporaneous legislative history.

(8) Legislative and administrative interpretations of such statute.

§ 1922 PRESUMPTIONS IN ASCERTAINING LEGISLATIVE INTENT

In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used:

(1) that the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.

(2) That the General Assembly intends the entire statute to be effective and certain.

(3) That the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth.

(4) That when a court of last resort has construed the language used in a statute, the General Assembly in subsequent

statutes on the same subject matter intends the same construction to be placed on such language.

(5) That the General Assembly intends to favor the public interest as against any private interest.

§ 1928 RULE OF STRICT AND LIBERAL CONSTRUCTION

(a) The rule that statutes in derogation of the common law are to be strictly construed, shall have no application to the statutes of this Commonwealth enacted finally after September 1, 1937.

(b) All provisions of a statute of the classes hereafter enumerated shall be strictly construed:

(1) Penal provisions.

(2) Retroactive provisions.

(3) Provisions imposing taxes.

(4) Provisions conferring the power of eminent domain.

(5) Provisions exempting persons and property from taxes.

(6) Provisions exempting property from the power of eminent domain.

(7) Provisions decreasing the jurisdiction of a court of record.

(8) Provisions enacted finally prior to September 1, 1937, which are in derogation of the common law. (Emphasis added)

(c) All other provisions of a statute shall be liberally construed to effect their objects and to promote justice.

§ 1933 PARTICULAR CONTROLS GENERAL

Whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted later and it shall be the manifest intention

of the General Assembly that such general provision shall prevail.

§ 1953 CONSTRUCTION OF AMENDATORY STATUTES

Whenever a section or part of a statute is amended, the amendment shall be construed as merging into the original statute, become a part thereof, and replace the part amended, and the remainder of the original statute and the amendment shall be read together and viewed as one statute passed at one time; but the portions of the statute which were not altered by the amendment shall be construed as effective from the time of their original enactment, and the new provisions shall be construed as effective only from the date when the amendment became effective. (emphasis added)

§ 1954 MERGER OF SUBSEQUENT AMENDMENTS

Whenever a statute has been more than once amended, the latest amendment shall be read into the original statute as previously

amended and not into such statute as originally enacted. This rule applies whether or not the previous amendment is referred to and whether or not its language is incorporated in the latest amendment. If the insertions in and the deletions from the statute made by the previous amendment are not incorporated in the latter, they shall nevertheless be read into the later amendment as though they had in fact been incorporated therein.

.4. Parties interested jointly, severally, or otherwise in a judgment may join in a petition for a writ of certiorari therefrom; or any one or more of them may petition separately; or any two or more of them may join in a petition. When two or more cases are sought to be reviewed on certiorari to the same court and involve identical or closely related questions, it will suffice to file a single petition for writ of certiorari covering all the cases.

RULE 2101. CONFORMANCE WITH REQUIREMENTS

Briefs and reproduced records shall conform in all material respects with the requirements of these rules as nearly as the circumstances of the particular case will admit, otherwise they may be suppressed, and, if the defects are in the brief or reproduced record of the appellant and are substantial, the appeal or other matter may be quashed or dismissed.

RULE 105. WAIVER AND MODIFICATION OF RULES

(a) Liberal Construction and Modification of Rules. These rules shall be liberally construed to secure the just, speedy and inexpensive determination of every matter to which they are applicable. In the interest of expediting decision, or for other good cause shown, an appellate court may, except as otherwise provided in Subdivision (b) of this rule, disregard the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction.

(b) Enlargement of Time. An appellate court for good cause shown may upon application enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the court may not enlarge the time for filing a notice of appeal, a petition for allowance of appeal, a petition for permission to appeal, or a petition for review.

RULE 107. RULES OF CONSTRUCTION

Chapter 19 of Title 1 of the Pennsylvania Consolidated Statutes (rules of construction) so far as not inconsistent with any express provision of these rules, shall be applicable to the interpretation of these rules and all amendments hereto to the same extent as if these rules were enactments of the General Assembly.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989
NO. _____

CLIFFORD W. LATSHAW,
Petitioner,
V
COMMONWEALTH OF PENNSYLVANIA,
V
SANFORD GROSS, HENRY BEAMER, ALBERT ZANGRILLI, GEORGE SHORALL, DALE SMOOT, ROBERT RUSSELL, NANCY LATSHAW, AND MELLON BANK, N.A.,
Defendants

PROOF OF SERVICE

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY) SS.

CLIFFORD W. LATSHAW, after being duly sworn, deposes and says that pursuant to Rule28.4 (a) of this court he served the within Petition for Writ of Certiorari to the Superior Court of Pennsylvania, Pittsburgh Office on counsel for the Respondent at the following address by hand: All parties required to be served have been.

Robert Collville, D.A.

Robert L. Eberhardt, Dep. D.A.

401 County Court House

Pgh., Pa. 15219

on _____, 19 _____

SWORN and SUBSCRIBED

before me this _____

day of _____, 19__

_____

NOTARY PUBLIC

My commission expires: _____